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THE INITIATIVE, REFERENDUM AND RECALL

BY GEORGE W. GUTHRIE,
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"Liberty without obedience is confusion, and obedience without liberty is slavery."—Penn's *Frame of Government for Pennsylvania*.

There can be no order and stability in any community, no civilization worthy of the name, unless the law gives expression to the ideals and collective will of the people, and its administration commands their respect.

Because the science of government is constantly being developed, because the rapid change of our population from rural to urban conditions has imposed new duties and responsibilities on our government, the meeting of which in an adequate manner is essential to the safety and well-being of the people, and because, in the face of this, it is, under our political system of party government, becoming more and more difficult to secure the changes in legislation and administration which the new conditions call for and the needs of the people demand, impartial and thoughtful men have come to a recognition of the fact that there must be some new method which will better enable the people to declare their will, and more surely and expeditiously enforce obedience to it, than is possible now.

Ultra-conservative men say that our present system of party government affords adequate facilities for all purposes; but that opinion ignores three essential factors, which must not be ignored in the consideration of the question.

In the first place, citizens, under our present system, divide themselves into parties according to their views on one or two issues which they regard as "paramount." These divisions, however, are necessarily on broad lines: men who differ radically on many questions act together to secure the adoption of the policies on which they agree. When conditions were simple, this system proved practically satisfactory; but as conditions become more complex, and the points of disagreement more important and those of agreement comparatively less important, these divisions become less satisfactory. More and more, citizens are beginning to feel that, unless some system

be provided by which the voters can give expression to their individual wishes on questions concerning which there is disagreement within the party, party associations cannot be maintained. The division of the people into two, or even three, great national parties, separated by clear and distinct lines, will soon be impossible, unless some method is provided through which intelligent men may continue their party associations without surrendering their own intelligence and conscience on questions on which they often have deep convictions. The division of the electorate into numerous small parties, rendering government through parties impossible except by bargains and trades, is not to be desired; yet, unless some method for the expression of individual differences under our present system is provided, it will be unavoidable.

In the second place, more and greater changes now take place, more and greater emergencies arise, in a year than formerly happened in a generation. Questions affecting the safety and well-being of the people arise from time to time, which should be met promptly. The delays which can be interposed when relief is sought through the ordinary course of party action, and the difficulties always met with in any attempt to fix responsibility for the passage or defeat of any measure affecting public interests, have and will cause great and unnecessary suffering and loss. Bills backed by public sentiment, but objectionable to controlling interests, are seldom openly defeated. They are smothered in the committee or left on the calendar of undisposed-of bills. At the last session of the Pennsylvania Legislature, the speaker refused to permit a roll-call on a certain public measure. When criticised for his action, he was reported in a public interview as saying that there was a clear majority of the house against the bill, and that the only effect of a roll-call would have been to put members on record and thereby cause some of them unnecessary trouble and expense in securing re-election. At the last Republican State Convention, a member objected to a resolution requiring all Republican candidates to commit themselves in writing to the measures pledged in the platform, because to do so would ensure the defeat of some of them.

Under such a system, how is it possible for the people to act intelligently?

They are not to be permitted to know the views of legislative candidates before election or how they vote when elected.

In the third place, in many instances an evil is accomplished by the mere enactment of a law, which cannot be rectified by its repeal. A franchise once granted becomes a contract and is not repealed by a repeal of the act granting it. A payment of public money under an appropriation legally made cannot be recovered. A general law, no matter how objectionable, becomes operative at once; it may be repealed at the next session, but even if the obstacles in the way of a repeal are overcome and the repeal secured at the next session, here in Pennsylvania the people must suffer under it for two years. A beneficial law defeated at one session may be enacted two years later; but in the interim the people must do without the relief. No matter how the evil measure was passed or the beneficial one defeated, whether it was ignorance, influence or direct corruption that accomplished it, the people are the sufferers, and under our present system must continue to suffer for two years at least.

It is because the people realize these facts that they are demanding a remedy and none has been suggested except the "Initiative, Referendum and Recall."

What Are They?

The "initiative" will provide a system by which the people can, without unreasonable delay, secure legislation which a majority after full public discussion believe to be best for public interest.

The "referendum" will provide a system by which the people can defeat legislation which a majority believe will prove detrimental to public interest.

And the "recall" will provide a system by which they can remove an executive or legislative officer elected by them, who has proven incompetent or unfaithful.

Proceedings under each of these systems must be inaugurated by a petition signed by a certain percentage of voters, varying from ten to fifteen per cent in the case of the "initiative," from fifteen to twenty per cent in case of the "referendum," and from twenty to twenty-five per cent in case of the "recall."

A petition under the "initiative" must contain a copy of the bill which the petitioners desire to have passed. When presented to the legislative body, the bill proposed must follow the regular course prescribed by law. It must be read, referred to a committee, printed, and reported back for consideration and action. If duly

passed and approved it becomes a law, as any other bill would. If it is rejected, or if it fails to receive final action in the legislative body, it must be submitted to the people at the next regular election for their consideration and action. While the legislative body cannot prevent the submission of the bill to the people, either by smothering, amending or defeating it, it can submit a substitute measure to be voted upon at the same election.

A petition under the "referendum" must be filed with the proper authority within a limited number of days after the passage of the bill objected to, during which period all bills of the class to which the "referendum" is applicable, must remain in suspense; the bill objected to must thereupon be submitted to the people at the next election.

If any bill submitted under either of these systems receives a majority of the votes cast at the election thereon it thereupon becomes a law; otherwise it fails.

A petition under the "recall" must name the officer affected and set forth the reasons for asking his recall. Upon the presentation of the petition, an election to fill the unexpired term must be held, either at the next regular election, or at a special election called for that purpose. The name of the officer proposed to be recalled is to be printed on the ballot as a candidate unless he withdraws it; other candidates may be nominated in the manner prescribed by law.

Bills proposed under the "initiative," or objected to under the "referendum," must be advertised substantially as in the case of amendments to the constitution; and an election under the "recall" must be held in the same manner and under the same regulations as an election for a regular term.

The best systems also provide that the proponents of or objectors to a bill submitted may file briefs, not exceeding a specified number of words, setting forth their reasons for or against it, which, together with the bill itself, shall be printed for distribution at public expense.

Why These Remedies are Necessary

The necessity of some such methods to preserve the integrity of our system of party government has already been explained; their necessity to prevent the breaking down of the barriers between the different departments of government, which is one of the fundamental principles of our system, needs only to be pointed out to be appreciated.

Through the operation of our system of party government, there has been developed in different municipalities and states, a body, commonly called "the boss and the machine," which, although unknown to the law, actually controls, more or less completely, the powers of both the executive and legislative departments. The framers of our constitution provided for separate and independent departments of government, each to exercise for itself the powers committed to it, and at the same time be a check upon all the others. The sole purpose of this was to prevent any one department becoming so powerful as to dominate and control the others, and so endanger the liberties of the people.

This is still the theory of our government. The "boss and machine," however, is a fact.

The "boss," chosen not by the whole people but by a mere faction, holding an office not known to the law, and exercising powers never legally conferred upon him, nevertheless, except in short periods of political revolution, controls both the executive and legislative departments of the municipality or state over which he rules, and in some instances, his malign influence has extended even into the judicial department.

Washington foresaw the possibility of such a condition arising under our system of party government; and in his "farewell address" warned the people that an excess of party spirit would have a tendency "to put in the place of the delegated will of the nation, the will of a party; often a small, but artful and enterprising minority;" and would be "likely, in the course of time and things, to become potent engines by which cunning, ambitious and unprincipled men will be enabled to subvert the power of the people and to usurp for themselves the reins of government."

Do we not now confront this very condition?

Justice Hughes, in describing the "city boss," says that "in the full play of his influence he becomes mayor, common council, commissioner of public works, head of the police department, as well as sheriff and district attorney." The accuracy of this description has never been challenged: *mutatis mutandi*, it also accurately describes the "state boss."

No one questions the existence and power of the "boss" in our system. Wherever he exists, his personality is so well known that no one familiar with public affairs ever hesitates in naming him. Yet he

holds no legal office, and exercises no lawful power. Were the purposes of the "boss" always honest and his methods pure, the system would still be a constant menace to liberty and good government.

That the powers of a single department of government should be controlled by an agency not known to the law and not selected by or accountable to the whole people, but only to a faction of a party, is incompatible with any theory of real representative government: but the control of the powers of two departments by a single agency of this character is destructive of our system of representative government, and overthrows the just balance of powers which is essential to its maintenance.

How much greater the evil—how much more serious the danger—when all three departments of government become subject to such control.

But the "boss" system, whatever pretenses it may make in the beginning, never has and never will remain honest either in methods or purposes. The opportunities which it presents for improper and illegal practices have in the end always and everywhere been utilized.

It is generally through the "boss and his machine" that the criminal and vicious classes secure the immunity required for the profitable prosecution of their occupations, paying therefor in money and in votes. So, too, it is to the "boss" that the "interests" go to secure the executive and legislative favors which they desire.

It is true that when the "boss" is hostile, or when his "machine" is not in perfect working order, direct bribery is sometimes resorted to. This, however, is dangerous to all concerned and is not a popular method.

The "boss" holds no office and can receive favors without subjecting either himself or the giver to the penalties of the criminal law.

Two other factors have been developed which tend to impair the balance of the system established by the constitution. One is the undue influence of the executive department, through the patronage which has from time to time been committed to it; the other is the number and vast wealth of business interests, which may be peculiarly and specially benefited or injured by new legislation, and which are therefore interested to defeat or promote it, without regard to the effect on the general public whether for good or evil.

It is true that sovereignty still remains with the people, and that

by long and persistent agitation they can in the end overcome all these obstacles and secure from the government that which they need and desire. But it is only by great and long-continued effort, and often by great expense which those concerned can ill afford, that it can be accomplished; and even then it may require the breaking of political associations to which the people are much attached and the defeat of other measures in which they are interested only in a comparatively less degree. In view of the rapid developments constantly occurring in matters which intimately affect our daily life, and of the rapid changes in conditions due to the growth of congested centers, more developments and greater changes taking place in a year now than in a generation before, these long delays in matters of vital importance impose a great burden of loss and suffering on the people and should not be continued if possibly avoidable.

Under our present system the practical difficulties in the way of any movement to secure legislation opposed by the "boss" are almost insurmountable. It generally requires either a political revolution or an insurrection so strong as to extort from his fears that which he will not concede to justice. Such legislation is usually smothered in committees, or left on the calendar of bills undisposed of, and it is difficult, if not impossible, to fix responsibility. And when the responsibility has been fixed, the power of the "boss" to protect the delinquent, either by securing his re election or providing for him in some other way, is very great.

The direct primaries are weakening this power; but when we contemplate the acknowledged expenditure this year of over \$110,000 to control (?) the primary election in Allegheny county alone, and the expenditure of over \$280,000 at the municipal election of 1911 in the same county, we realize how potent are the influences against which the people have to contend in any struggle with the machinery of a majority party.

What is the Remedy?

No remedy has even been suggested except the "initiative, referendum and recall," and as long as the opponents of these measures fail to suggest any other, we are justified in questioning either their good faith or their appreciation of the evils of which the people most justly complain.

But the opponents of these measures say that they will substi-

tute a "pure" democracy for representative government, and "popular impulse and mob rule" for the deliberate action of representative bodies.

What are the facts?

This government of ours is a democracy, because sovereignty is not delegated to any body or department, but belongs only to the people themselves. It is not a "pure" democracy, technically speaking; because, although in some matters, notably in making and amending their constitutions, the people exercise powers of direct legislation; still the ordinary functions and details of legislation are committed to legislatures, whose powers are limited, however, by the constitutions which provide for them. On the other hand, it is not a "pure" representative government, because, as already stated, sovereignty has not been delegated either to any single department, or to all the departments of government combined.

We have no such body as the British Parliament, which is representative and sovereign. The power of parliament can only be controlled by revolution. With us, only the people themselves have this sovereignty.

To assert that, in such a government as ours, any procedure which merely provides a sure and convenient method for the ascertainment and enforcement of the will of the people, who are sovereign, is revolutionary, is simply an absurd misuse of words.

Nor are the systems proposed new in anything except in the mode provided for their application. From the beginning of this government, constitutions have been adopted and amended by direct legislation, and in different states various matters of legislation, more or less numerous, have been left to the decision of the voters. There is, therefore, nothing even new in the principle involved in these measures.

In the Articles of Confederation, and in the first Constitution of Pennsylvania (1776), the "recall" was provided for. It was dropped subsequently, not because it was radical or revolutionary, but because it was believed that the short term of office would sufficiently protect the people from abuse of power. The new terms of one year for the state house of representatives and two years for the national, for example, seemed to the framers very short when contrasted with the parliamentary term of seven years with which they were familiar. The shortness of the term, in most cases the term

would expire before it could be put in operation, and the almost entire absence of any public means for spreading information, made the "recall" generally unnecessary and always impractical.

But all this has changed.

Terms of offices have been greatly lengthened. Means of public and private intercourse have been developed so that every morning we have spread before us the news of the world, and a man sitting in his office in one city can talk with another in any city east of the Rocky Mountains.

Why, then, should the people be required to suffer for two, four or perhaps six years for relief from a public servant whom they had trusted, but who proved incompetent, unfaithful, or corrupt, or from the consequences of the improper defeat or passage of some legislative measure?

Of course, in cases in which actual corruption can be proved, a corrupt official *may* be removed by impeachment. This is the theory; but such proceedings are so cumbersome, slow and expensive, and are so apt to be disposed of, not according to justice, but according to political interests and influence, that they are practically useless. Moreover, in the great betrayals of public interest, actual corruption, even if it exists, cannot be proved. But there is not even this pretense of protection for the people from the consequences of legislative wrong. The impeachment of a corrupt legislator does not impair the validity of a law passed by his corrupt vote.

It is no answer to say that the people themselves are to blame for electing officials who prove false or incompetent, and therefore should suffer the consequences whatever they may be. No business man or combination of business men act on any such theory in the conduct of their private affairs. They claim the right to remove at once any officer or agent who proves unsatisfactory for any reason. A conspicuous example of this is contained in the revised draft of the Aldrich bill providing for a national reserve association, recommended by the Monetary Commission. This bill provides that the governor of the association, although to be appointed by the President of the United States, may be removed at any time by a two-thirds vote of the directors.

In theory the "recall" is right. Can the people, entrusted with the power to appoint, be safely entrusted with power to remove? The question answers itself.

The people are sovereign; and their sovereignty is never safe except in their own hands.

Let public officers know that they are public servants, and that neither the "boss," the "machine" nor the "organization" can protect them when they prove false to their trust, and the "recall" will be rarely needed. In an election under a "recall," the officer complained of will stand alone and will be judged on his own merits.

Instability

It is asserted that the "recall" would lead to continual public agitation which would affect business. This objection is not tenable either in theory or in fact.

This is a republic; and whatever agitation is necessary to secure good government for the people, must be borne as essential to its maintenance. The American people, however, are as a whole patient and conservative, not mercurial. We have from time to time exhibitions of great popular excitement; but in the end the decision of the people is reached soberly and deliberately; and when made, no matter how great and bitter the previous agitation may have appeared, nor how serious the disappointment of the defeated may be, it is accepted peaceably.

Even the election of a President by what the majority at the time believed to be fraudulent means, though bitterly resented, was submitted to without any popular disturbance whatever. There was no legal remedy; and the overwhelming popular sentiment in favor of order made any other course impossible.

In 1907, in the midst of profound political peace, the business of this country was precipitated into one of the most severe and protracted panics we have ever known; and now in the midst of the most bitter political contest of a generation, business is daily improving and prospects growing brighter.

This specter of business disaster from necessary political activity should therefore be laid to rest.

Special interests dependent upon governmental favors may be made uneasy when the power of the faction to which they look is threatened. But the life of the country moves on peacefully as long as justice prevails; nothing will disturb it but intrenched wrong in public office.

In Great Britain they have a "true" representative govern-

ment. Parliament is sovereign. It has removed kings and changed the succession of the crown; and it can prolong its own term. In all questions, its will is supreme; its acts can only be set aside by revolution. Executive power, moreover, belongs to what is in fact really a parliamentary committee. Yet for generations, no parliament has served out the term for which it was elected; from time to time—frequently at very short intervals—it is voluntarily dissolved in order to refer some important question to the decision of the people. Indeed, it is the rule to ascertain the will of the constituencies by a dissolution when an important new measure is introduced. In the twenty-three years, from the Congress of Berlin to the South African war, including the period of the Egyptian war, parliament was dissolved eight times in order to ascertain by a "referendum" the will of the people on important foreign and domestic measures, including foreign wars, the Irish land act, Irish home rule, the corrupt practice act, the franchise act, the redistribution of seats, and public education. Within the last few years there were two dissolutions in quick succession in order to ascertain the will of the people on a new system of land taxation.

It must be remembered that the dissolution of parliament also involves a change of the executive. It is as though the President and congress were both subjected to a "recall" at one election.

In fact, whatever the theory may be, the English system of representative government was developed through and rests upon the popular referendum. It is true that there is no written constitutional provision which compels a government to dissolve parliament under certain conditions, but public sentiment is so strong that no administration would dare defy it and persist in a refusal to dissolve when, according to the custom and usage, a dissolution was proper.

Cannot the American people be safely trusted with power much more limited and restricted than that which, in the hands of the English people, has secured peace, good order and safety for England during such a period of stress as that briefly outlined above, and kept it the most stable government in Europe?

Mob Rule and Government by Popular Impulse

The assertion that the "Initiative, Referendum and Recall" would substitute "mob rule and popular impulse" for the calm and impartial deliberation of representative bodies entirely ignores the

facts. To secure the signatures of from ten to fifteen per cent of the voters of any municipality or state to a petition for an "initiative," or from fifteen to twenty per cent for a "referendum," will always require so much time, effort and expense, that it would be impossible on a mere popular impulse or sudden outbreak of temper. It could only be accomplished when backed by a deep conviction of justice.

All this will be followed by the public arguments, for or against the pending measure, which will inevitably occur during the campaign preceding the election; there would also be distributed to the people, under public supervision, the printed briefs prepared by its supporters and opponents. Only a mind distorted by idle fears or perverted by self-interest can see in this the slightest element of "mob rule," or even the shadow of danger of the adoption of improvident and ill-considered legislation by "popular impulse." Of course, there will always be a possibility of a mistake; but it will be an honest mistake, and it will not occur more frequently than such mistakes occur in representative bodies. On the other hand, action prejudicial to public interest is sometimes taken in representative bodies, not through mistake, but through improper or even corrupt influence. That danger will be reduced to a minimum under the new system.

A Preventive of Corrupt Influence

The "initiative" and "referendum" would be fully justified by its tendency to eliminate bribery from legislative bodies, even if there were no other reason for its adoption. What inducement would there be to pay to defeat a bill in the legislature which the people could finally and promptly pass by the "initiative?" What inducement to secure the passage of a bill which they could vacate by a "referendum" before the slightest advantage could be secured from it? In the language of the street, no lobbyist will pay his money when the goods cannot be delivered.

Recall of Judges and Judicial Decisions

Much prejudice has been excited against the "recall," because some partisans have advocated its use for purposes for which it was not designed, and for which it has not been shown that it is needed.

It would be an idle untruth to assert that our courts have at all times and in all things acted in such a manner as to deserve and gain

the confidence of the people. From time to time, and unfortunately with increasing frequency, they have done things which merited and received public condemnation, and something must be done soon to restore public confidence.

Much, if not all, of the just criticism to which our courts have been subjected has sprung from causes which can and should be removed without resort to a remedy which may further impair their independence and so aggravate the evils of which we complain. The experience of the world has shown that, in order that the judiciary should command the confidence of the community, without which their full usefulness is impossible, they must be free from the influence, either of the suitors who appear before them, or of the sovereign by whom they are appointed.

Of course, as in all human institutions, there have been instances of judicial incompetency and even of individual corruption; but, generally speaking, the impairment of public confidence has been due either to the suspicion of the baleful influence of the "boss" or to the exercise of powers which do not properly belong to the judiciary. In almost every instance where improper influence has been charged, if we look far enough, the hand of the "boss" will be more or less clearly seen. Remove that corrupt and hated influence, and much will be done to restore public confidence.

The judges should also be relieved of all executive and administrative powers. Some very sincere people have from time to time advocated the conferring of non-judicial powers on the judges, with a mistaken idea that thereby such powers would be put beyond the control of the partisan "machine." In many instances the relief, if any, has been only temporary: the possession of such powers by the judges has made the control of them a necessity to the "machine," and in the end will lead to the destruction of their independence and a forfeiture of public confidence.

And finally, the courts must also cease to exercise "legislative powers," and especially to refrain from attempts to change the meaning of constitutions, to make them conform to their ideas of what they should be—a power never committed to them and with which they cannot be safely entrusted. For a court to exercise any legislative power, and above all to amend and alter the meaning of any constitutional provision, is to usurp a power never intended to be committed to it.

Legislative power belongs exclusively to the legislature. The correction of any improper use or non-use of this power belongs to the people, not to the courts.

The constitutions especially must be saved from any unauthorized interference. A constitution is the product of the direct legislation of the people: if it is too strict, it is for the people to relax it; if it is inadequate, it is for them to amend it.

No officer, executive, legislative, or judicial, has the right—no one should dare—to attempt to change the meaning of the constitution in any particular.

The constitutions were adopted by the people as a limitation on their servants; any servant who attempts to change a word of it puts himself above his master.

Many well-intentioned people say that unless some one has the power to “liberalize” the constitution from time to time, it will become too rigid to allow for growth. That may be true; but the “one” to exercise such powers is not the judiciary, but the people themselves.

The demand for “recall of judges and judicial decisions” will die a natural death with the removal of the causes which have produced it.

Conclusion

The “initiative,” “referendum” and “recall” will be great agencies for making and keeping the government of the people truly representative. The people can safely be trusted with the power to use these agencies of liberty. In matters which concern their safety, well-being and happiness, the people as a whole are wiser than any man.

This is the lesson of reason and experience—that all the powers of government must be so regulated that the people can, with reasonable effort and promptness, compel their exercise in such manner as will, in their judgment, afford them the best opportunity to reach the highest development, physically, mentally and morally, of which they are capable.

This is the only way to orderly progress and peace.

The people have the right and the power, and in the end will exercise it, to so order their government as “to promote the general welfare and secure the blessings of liberty” to themselves and their posterity.

There must be proper provision for due consideration; but it must not take the form of obstruction, nor be of such a character as will unduly delay the people in realizing the benefit and advantage which the progress of the world is opening to them with greater and greater rapidity, or in securing that protection which only the state can adequately give against the ever-changing dangers to which they are from time to time exposed by changed conditions, or by new devices of cunning and unscrupulous men.

And so our civilization can move forward in peace and good order to higher and constantly higher standards and ideals, until we reach that point, to which the world is surely moving, of perfect liberty under perfect laws.